KOK WEE SIONG

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
JAMES FOONG JC
[CIVIL SUIT NO. 44-10 of 1991]
3 FEBRUARY 1992

ADMINISTRATIVE LAW: *Application for habeas corpus - Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 - Extention of detention order - Right to representation - Detention order not explained - Whether detention valid.*

On 9 April 1988, the petitioner was arrested under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the said Act). On 6 June 1988 a detention order was made. On 7 June 1988 Inspector Nor and Inspector Razali served the detention order and the relevant forms on the petitioner to enable him to make representation. On 5 June 1990 the said detention order was extended for another two years.

Two points of contention as to why the petitioner should be released were considered. They are (i) must the petitioner have representation to an extention of detention order? and (ii) must the detention order be explained to the petitioner?

Held:

[1] When the detention order was extended the petitioner is not deprived of his constitutional right of representation since such right was offered to him in the first place when the said detention order was made. However, it is only when the grounds of detention for the extended period are different or partly the same and partly different, that the law under s. 11A(2) of the said Act provides representation to be granted to the petitioner. As the grounds for the extention of the said Detention Order against the petitioner are the same as those when the said Detention Order was made, there was no necessity for further right of representation to be granted to the petitioner.

[2] To comply with Article 151(1)(a) of the Federal Constitution, the said Detention Order, notice and the relevant forms must be explained to the petitioner. This is to enable the petitioner to know and to understand the grounds and nature of his detention and to enable him to make purposeful and effective representation.

[3] All the relevant documents served on the petitioner must be understood by him in his own language and the person engaged in the explanation must state that he too understood the said language and was proficient in it especially, in the case such as this, where the persons who did the explanation are of different origin.

[Petitioners application allowed.]

Cases referred to:

Zakaria bin Jaafar v. Menteri Hal Ehwal Dalam Negeri & Ors. [1989] 3 MLJ 316 ***(foll)***
Lallubhai Jogibhai v. Union of India [1981] AIR Supreme SC 728 ***(foll)***
Tan Hoon Seng and Ng King Chew v. Minister of Home Affairs & Anor. [1990] 1 CLJ (Rep) 271 ***(foll)***

Legislation referred to:

Federal Constitution, art. 151, (1)(a)
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 8, 9, 11A, (2)

For the applicant - Gana Muthusamy; M/s. Gana Muthusamy & Co.
For the respondent - Mahmud bin Hj Abdullah, SFC

JUDGMENT

James Foong JC:

This is a *habeas corpus* application by the applicant for his release under a detention order dated 6 June 1988 (hereinafter shall be referred to as "the said detention order"), made under the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter I shall refer to as "the said Act"), by the Deputy Minister of Home Affairs.

The facts of this case are as follows:

1. On 9 April 1988, the petitioner was arrested by the police under s. 3(1) of the said Act.
2. On 6 June 1988, the said detention order was duly made by the Deputy Minister of Home Affairs.
3. On 7 June 1988 one Inspector Nor together with Inspector Razali served on the petitioner the detention order and the relevant forms required under s. 9 of the said Act to enable the petitioner to make relevant representation.
4. On 5 June 1990, the Deputy Minister of Home Affairs extended the said detention order for another two years on the petitioner thereby, making the expiration period of the detention to be on 5 June 1992.
5. In pursuance to the said detention order, the petitioner is detained at the Pusat Pemulihan Akhlak, Batu Gajah, Perak where he is presently now.

The petitioner's Counsel Mr. Gana Muthusamy submitted to this Court 7 points of contention as to why the petitioner should be released. Of these 7 points, I find that only two are worthy of consideration.

The first point advanced by Mr. Gana is that the order for the extended detention is made *ultra vires* to the Federal Constitution and therefore, is void, bad in law and of no effect. To elaborate this point, the learned Counsel submitted that s. 11A of the said Act does not provide a right to the petitioner to make representation. Section 11A relates to any extension of detention made in pursuance to any detention order made initially under s. 6 of the Act. Though detention made under s. 6 does provide the detainee a right to representation, the detainee's right to representation is absent when the detention is extended. This therefore contravenes Article 151 of the Federal Constitution which guarantees any person under detention a right to make representation against the order for detention. "The order" for detention according to the learned Counsel must surely include the order for the extension of the said detention order.

After careful perusal of the relevant provisions stated, I find the petitioner's contention on this point unacceptable. From the offset, there is actually only one detention order and that is, in this case the said detention order dated 6 June 1988. When this order was made, relevant opportunities for representation were duly given to the petitioner but of which, the petitioner did not want to make use of. When the order for extension of detention was made on 5 June 1990, it is in fact an extension of the said detention order dated 6 June 1988. When it is an extension of the said detention order, the petitioner is not deprived of his constitutional right of representation since, such right was offered to him in the first place when the said detention order was made. However, it is only when the grounds of detention

for the extended period are different or partly the same and partly different, that the law under s. 11A(2) of the said Act provides representation to be granted to the petitioner. As the grounds for the extension of the said detention order against the petitioner are the same as those when the said detention order was made, there is no necessity for further right of representation to be granted to the petitioner. He has already been provided such right when the said detention order was made. In respect of this point, I am in full agreement with the judgment of Mohtar Abdullah JC (as he then was) in the case of *Zakaria bin Jaafar v. Menteri Hal Ehwal Dalam Negeri & Others* [1989] 3 MLJ 316.

The second point that warrants consideration is the submission by the petitioner's Counsel that, the said detention order was not explained to the petitioner. A copy of the said detention order is annexed to the affidavit of Inspector Nor (encl. 11) as NAHJ 1. This said detention order consists of a single page, printed and typewritten on the front and back of the page. The back page consists of various paragraphs, the first of which declared that Inspector Nor and Inspector Razali served the said detention order and other relevant documents on the petitioner. Just before the end of the first paragraph, there consists of a statement printed in the following manner:

> Kami juga telah menerangkan isi kandungan Perintah Tahanan, Notis dan borang tersebut dalam Bahasa ...
>
> (English translation virtually means, we also explained the contents of the Detention Order, Notice and the forms in the language of ...)

After the printed word "bahasa" there is a typewritten word "Mandarin".

The aforesaid paragraph is then followed by the signature of Inspector Nor, his full name and position. Below this is the signature of Inspector Razali who supposedly signed as a witness since there is a word "(saksi)" (meaning witness) next to his signature.

After this paragraph is a column for the Jurubahasa (Translator) to be signed and filled up with particulars such as his name and NRIC number.

The last paragraph of this form contains the acknowledgment of the petitioner that he received the detention order, notices and forms and understood the contents therein. The petitioner's signature is then affixed at the end of this paragraph.

The petitioner now contends that he only understands Mandarin and that the said detention order is not signed by any translator.

A perusal of this back page of the said detention order will find no translator having signed the column laid out for such purpose. Therefore from the face value of this detention order, both Inspector Nor and Inspector Razali must have explained the contents of the said detention order, the notice and the said forms to the petitioner in the Mandarin language. If this is so, why is there no mention in the affidavit of Inspector Nor (Encl. 11) that he knew and was proficient in the Mandarin language at the material time. Though, I am aware that there are many Malaysians of Malay origin of present day who know, understand and are proficient in the Mandarin language but, they are more of an exception. As such I cannot take judicial notice that Inspector Nor or for that matter, Inspector Razali knew, understood and were proficient in the Mandarin language at the time when the said detention order, notice and relevant forms were explained to the petitioner.

Our country is made up of people from different origins with a diversity of languages. Save until the day when all Malaysians can generally be said to be proficient in the Bahasa Malaysia, there is a necessity to translate information in a language that is understood by

the recipient. And, if a person, giving information is of a different origin from the recipient there is a necessity for the person giving the information to state that he understands and is proficient in the language that he used in giving the information. In this case, I find no such information appearing in the affidavit of Inspector Nor or anywhere else in the documents annexed. As for Inspector Razali, whose name also appeared to have explained the contents of the relevant documents to the petitioner, there is not even an affidavit from him filed in this Court.

Following from the above, I ask myself whether it is a rule that the said detention order, notice and forms, must be explained to the petitioner. Article 151(1)(a) of the Federal Constitution states as follows:

> the authority on whose order any person is detained under that law or Ordinance shall, as soon as may be inform him of the grounds for his detention and, subject to cl. (3), the allegations of fact on which the order is based, ...

Presumably abiding by this Article of the Federal Constitution, the relevant provision relating to explanation and translation at the back page of the said detention order was adopted by the relevant authorities. As this provision does appear and in compliance with Article 151(1)(a) of the Federal Constitution, it is therefore a rule of law that the said detention order, notice and the relevant forms must be explained to the petitioner. This is to enable the petitioner to know and to understand the grounds and nature of his detention and to enable him to make purposeful and effective representation (see the case of *Lallubhai Jogibhai v. Union of India* [1981] AIR SC 728)

Therefore it is essential and vital that the said detention order and all relevant documents, so served on the petitioner, must be understood by him in his own language and, the person engaged in the explanation must state that he too, understood the said language and was proficient in it especially, in the case such as this, where the persons who did the explanation are of different origin.

The learned Federal Counsel argued that the petitioner must have understood the explanation since, the petitioner signed on the last paragraph of the back page of the said detention order that, he understood the contents therein. I am not prepared to accept this argument for in the first place, there must be shown evidence that the contents were explained to him in the language he understood. Unless there is evidence of this nature, whatever the petitioner signed to say that he understood will be meaningless because it may not be the thing that was explained to him.

Adopting the guidelines as laid down by the Supreme Court in the case of *Tan Hoon Seng and Ng King Chew v. Minister of Home Affairs & Anor*. [1990] 1 CLJ (Rep) 271, where it is stated that:

> The law of preventive detention must be construed strictly and in the case of doubt the Court should lean in favour of the subject.

I therefore order that the petitioner be set at liberty forthwith.

Application allowed.

Also found at [1992] 1 CLJ 681